

F. IDEM continues to issue NPDES permits that do not comply with the federal antidegradation requirements at 40 C.F.R. § 131.12(a)(2).

All of the problems described above have resulted in IDEM's continued issuance of NPDES permits for new or increased loadings without appropriate consideration of the necessity of the degradation or "full satisfaction" of public participation provisions as required by 40 C.F.R. § 131.12(a)(2). Improper issuance of permits results in irreparable harm to both Indiana and downstream waters. Most obviously, IDEM routinely allows new or increased discharges of phosphorus that would be prohibited in Illinois, where most new or increased discharges of phosphorus in concentrations higher than 1 part per million are prohibited. 35 Ill. Adm. Code 304.123 (g). But many other types of pollution are also being allowed that are not necessary to accommodate important social or economic development---to the detriment of Indiana and downstream waters.

For example, in the last year IDEM has issued a number of NPDES permits for new and increased discharges without conducting a proper antidegradation analysis:

- The City of Jeffersonville Wastewater Treatment Plant sought a permit to relocate an outfall to another stream, thereby increasing the pollutant loading in the new receiving stream. ELPC's comment letter on NPDES permit IN0023302 requested a demonstration that the degradation of the receiving water was "justifiable on the basis of necessary economic or social factors" (the current antidegradation language that applies outside of Indiana's Great Lakes Basin), and asked whether phosphorus treatment was considered as an alternative to reduce phosphorus loading to the receiving stream. The responsiveness summary included with the final permit as issued stated that "Phosphorus limitations are not included in the permit. Therefore no antidegradation demonstration for phosphorus is required." See Exhibit 9. It also contained a memorandum from the applicant (dated months after the draft permit was put on notice) documenting the purported antidegradation analysis. Rather than providing a proper antidegradation analysis, the memo instead compares the cost of constructing a new effluent sewer to the cost of increasing the capacity of the existing sewer, and makes no reference at all to the necessity of increased pollutant loading or the ways such loading might have been reduced. (Ex. 9) Moreover, the fact that there is no phosphorus limit in the permit is certainly not an excuse for failing to determine whether a phosphorus limit *should* be in the permit to prevent unnecessary degradation of water quality from phosphorus discharges.
- The City of Austin Wastewater Treatment Plant sought a permit to increase the facility's discharge from 1.0 MGD to 2.0 MGD. The draft permit allowed the facility to double the pollutant loading of CBOD, TSS and Ammonia-

Nitrogen to the receiving stream. ELPC's comment letter on NPDES permit IN0025135 requested a demonstration that the increased pollutant loading was indeed necessary and asked what alternatives were considered to reduce that pollutant loading. The letter also pointed out that the receiving stream flows into a waterbody that is already listed as impaired on Indiana's 2008 Section 303(d) list of impaired waters. The responsiveness summary in the final permit included an "antidegradation justification," consisting of a few paragraphs explaining the need for the facility expansion in order to accommodate development in the City of Austin, but again contained no mention of the need to increase pollutant loading or what pollution control technologies were considered to reduce that loading. This description was submitted by the applicant in response to ELPC's letter several months after the draft permit was put out on public notice. Exhibit 10.

- The Town of McCordsville Wastewater Treatment Plant sought a permit to increase the facility's discharge from 0.225 MGD to 0.50 MGD. The draft permit allowed the facility to increase the pollutant loading of CBOD, TSS and ammonia-nitrogen by the same factor as the capacity expansion. Again, ELPC's letter requested an antidegradation analysis justifying the pollutant load increase, and again, the responsiveness summary included with the final permit contained an "antidegradation justification" consisting of a few paragraphs explaining the need for the facility expansion in order to accommodate growth. Again, these paragraphs were submitted by the applicant to IDEM in response to ELPC's letter, months after the draft permit was put out on public notice. Exhibit 11.
- IDEM issues numerous general permits without regard to the fact that many of the permitted operations are situated in watersheds with known impairments.

From these examples, it is clear that IDEM is not conducting antidegradation analyses as a matter of course when it receives requests for increased pollutant loading at a facility. Further, none of the so-called antidegradation analyses that IDEM has approved begins to answer the relevant question of whether the increase in pollution is necessary.

G. Indiana's general permits "by rule" allow activities to degrade water quality without a proper consideration of necessity as required by 40 C.F.R. § 131.12(a)(2).

Indiana is allowing new and increased loadings to Indiana waters on a wholesale basis under all of Indiana's general permits "by rule."¹⁴ As set forth in Title 327, Article

¹⁴ Some of the discharges allowed pursuant to these general permit rules might be allowed without an antidegradation demonstration under an exception established in valid rules and others of these discharges